HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Appeal No.700/2001
(Old No. 1732 of 1995)

Baldev Singh … Appellant

Versus

State of U.P. …Opposite Party

Approved for reporting.

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Not approved for reporting.

Date of Decision 22nd December, 2005.

Initial of Judge.

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IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Appeal No.700/2001
(Old No. 1732/1995)

Baldev Singh
S/o Sri Madan Singh
R/o Uparikot
Police Station Kotwali
District Uttarkashi … Appellants

Versus

State of U.P. …Opposite Party

Sri Rajendra Kotiyal, learned counsel for the appellant
Sri D.K. Sharma, learned G.A. counsel for the State.

Hon'ble P.C. Verma, J.
Hon'ble B.C.Kandpal, J.

(Delivered as per Hon'ble B.C.Kandpal, J)

1. This criminal appeal arises out against the judgment and order dated 29.09.1995 passed by Sessions Judge, Uttarkashi in Sessions Trial No. 18 of 1992 State vs Baldev Singh under Section 302 I.P.C. thereby convicting the appellant under Section 302 I.P.C. and sentencing him to undergo for life imprisonment.

2. Brief facts of the prosecution story are that on 29.07.1992 deceased Jayendra Singh along with certain other persons of the village Uparikot, Police Station Kotwali, District Uttarkashi were sitting at the house of Kedar Singh and were talking about the dealership of fair price shop.

3. One Chandra Mohan who was the grandson of Baldev Singh had submitted an application for dealership and there was some conservation between Jayendra Singh and Baldev Singh for making signature over that application. Jayendra Singh objected to it and whereupon a quarrel took place between Jayendra Singh and Baldev Singh.

4. When this conversation was going on at the house of Kedar Singh in the night , Baldev Singh after having exchanged of hot words,

left the place of occurrence. It was about 12.15 at night of 29/30.07.1992 when Jayendra Singh was going to his house and as soon as he reached the Chawk of the house of Kedar Singh from where a *Rasta* leads , accused Baldev Singh seeing him alone started giving knife blows saying that he was raising objections in their work hence he will not leave him alive. On hearing hue and cry, Bhajan Singh, Ilam Singh and Kedar Singh reached at the place of occurrence and rescued Jayendra Singh from Baldev Singh but by that time Jayendra Singh had already sustained knife blows on his person. Baldev Singh ran away from the spot. Jayendra Singh fell down on the heap of stones lying at a distance of about 10 paces from the place where he was stabbed. Jayendra Singh died spontaneously.

5. Report with regard to the incident was given to the complainant Kamal Singh Rawat by the father of deceased and on the basis of this report a case was registered against the accused/appellant – Baldev Singh at P.S. Kotwali Uttarakashi on 30.07.1992 at about 7:30 a.m. After the First Information was lodged, the police reached at the spot and inquest on the body of the deceased was conducted on 30.07.1992. Thereafter the body of Jayendra Singh was sent for post mortem. Dr. Ajit Gairola conducted the post mortem on the body of the deceased on 31.07.1992 at 11:00 a.m. and he found following anti mortem injuries on the person of the deceased – Jayendra Singh:-

1) *Incised wound 3cm X 1 cm on left side of chest, on 6th rib, 2cm below left nipple and 7 cm. Lateral to midline. Blood clot was present wound communicative on thoracic cavity.*
2) *Incised wound 2cm X 1cm deep on left thigh, 18 cm above left knee.*
3) *Incised wound 4cm X 1.5cm deep on back of left thigh 11cm above knee."*

6. The doctor mentioned in the post mortem report that the condition of the internal organ were effected by the injuries and in the opinion of the doctor the death was caused about one day ago. The death was caused due to antimortem injuries to heart (injury No. 1) as well as shock and hemorrhage.

7. The Investigating Officer – Satyapal Singh (P.W.6) recorded the statement of the witnesses and prepared the site plan, thereafter arrested the accused. The Investigating Officer has also got the knife recovered which was used in the commission of crime on the pointing out of the accused.

8. After the investigation of the case was complete the chargesheet was submitted against the accused/appellant on 06.09.1992 under Section 302 I.P.C. before the court concerned. After the submission of the chargesheet the accused was committed to the court of Session for trial.

9. The accused/appellant appeared before the learned Sessions Judge and he was charged for the offence under Section 302 I.P.C. 27.01.1993. The accused denied the charge leveled against him and claimed his trial.

10. The prosecution in order to bring the guilt of the accused to home produced Kamal Singh Rawat (P.W.1) – Informant, Bhajan Singh ((P.W.2)- Eyewitness, Fate Singh (P.W.3) – Eyewitness, Jagmohan Singh (P.W.4)– witness of recovery of knife, Dr. Ajit Gairola, (P.W.5) as witness who conducted post mortem of the deceased and S.I. Satyapal Singh (P.W.6) – Investigating Officer. Apart from the oral testimony the prosecution has produced copies of documents in support of its case.

11. After the prosecution evidence was over, the statement of the accused was recorded under Section 313 Cr.P.C. The accused did not adduce any evidence in his defence.

12. Learned Sessions Judge after having considered the entire evidence on record and hearing learned counsel for the parties convicted the accused/appellant – Baldev Singh under Section 302 I.P.C. and sentenced him for life imprisonment vide judgment and order dated 28.09.1995.

13. Feeling aggrieved by the aforesaid judgment and order, the appellant has preferred this appeal before the Hon'ble Allahabad High Court which has been transferred to this Court, for disposal, after creation of separate State.

14. Heard Sri Rajendra Kotiyal, advocate learned amicus curiae for the appellant, Sri D.K. Sharma, learned G.A. counsel for the State and perused the record.

15. Learned counsel for the appellant has first argued that the First Information Report in this case has been lodged after due deliberations. There was ample opportunity with the complainant to falsely implicate the appellant in this crime.

16. The arguments advanced by the learned counsel for the appellant appears to be devoid of any force. Kamal Singh Rawat (P.W.1) who is the complainant in this case has stated in his deposition before the court below that he was a *Pradhan of the village* and on 29.07.1992 at about 12/12:15 in the mid night he was sleeping at his house when Bishan Singh father of the deceased along with other persons came to him and informed that his son Jayendra Singh had been murdered by Baldev Singh. This witness has further deposed that after receiving the information, he went to the Chawk of Kedar Singh and saw the dead body of Jayendra Singh lying on the heap of the stones in the Chawk. He has further deposed that he had enquired about the occurrence from the persons present over there and he was informed that

on an application of Chandra Mohan Singh for dealership, accused Baldev Singh tried to get the signature on which quarrel took place between Baldev Singh and Jayendra Singh. Baldev Singh thereafter inflicted knife injuries upon the person Jayendra Singh causing his death. The deposition of this witness further reveals that he started for police station at about 01:00 a.m. leaving the dead body in the supervision of the village *Pradhan.* He reached police station at 05:00 a.m. and scribed the report over there. This witness has also deposed that a report was registered at 07:00 a.m. when the constable clerk as well as station officer reached Police Station. Deposition of P.W.1 further reveals that after lodging the report the station officer along with other constable started from the Police Station at about 08:00 a.m. towards the place of occurrence and they reached at the spot at 1 PM . Thereafter the police took the dead body in its possession and prepared inquest.

17. Inquest report is Ex Ka. 7 which reveals that the inquest of the body of the deceased started at 12:30 p.m. and ended at 03.00 p.m. on 30.07.1992. Therefore in view of the aforesaid circumstances it becomes quite clear that the informant proceeded for police station in the night of 27/30.07.1992 and reached police station in the morning of 30.07.1992. Therefore, lodging report at 07.30 a.m. in the police station appears to be justified. The fact that the report was lodged at the alleged time (07:30 a.m.) is further corroborated from this aspect that the police started to the place of occurrence at about 08:00a.m. The distance of the place of occurrence from the police station is 14 kms, therefore, it is quite possible that in case, if the complainant would have started from the place of occurrence at 01:00 a.m. in the night then he could have taken about four hours to reach to police station vis-à-vis the police might have taken four hours to reach at the place of occurrence from the police station.

18. In these circumstances, I do not find any undue delay in lodging the First Information Report at police station by the complainant Kamal Singh Rawat (P.W.1).

19. There is no iota of evidence available on record that the First Information Report was lodged by Kamal Singh Rawat (P.W.1) after due deliberations. The time consumed by the complainant in going to the police station and lodging the report over there has been satisfactorily explained and I do not find any reason to discard the prosecution evidence in this regard.

20. Under these circumstances narrated above, I am of the view that the First Information Report in this case is prompt and there was no occasion for any kind of development in the prosecution story. The facts narrated in the First Information Report appears to be quite correct.

21. The learned counsel for the appellant has further submitted that the overwriting on the date mentioned in the First Information Report Ex. Ka 1 creates that doubt about the date of occurrence.

22. We are not convinced with the contention raised by the learned counsel for the appellant. The occurrence took place just about the mid night of 29/30.07.1992 and that therefore the reason for such discrepancy appears in the F.I.R. Ex. Ka. 1. From the circumstances of the case it is gathered that earlier the date was mentioned in Ex. Ka. 1 as 30.07.1992 which by overwriting was made as 29.07.1992. The First Information Report reveals that the occurrence took place at 12.15 PM on 29/30.7.1992 and it was only because of the reasons that the informant had written the application in the early hours of 30.7.1992, he mentioned the date as 30.7.1992 in the first line. As the occurrence took place a little before midnight and the date was changed as

29.7.1992 instead of 30.7. 1992. It is also clear from other circumstances of the case that the incident took place in the mid night of 29/30.7.1992 hence there does not appear any discrepancy on account of the over writing pertaining to the date of Ex.KA-1. Moreover this over writing in any way does not affect the prosecution version.

23. Learned counsel for the appellant has further tried to submit that the descriptions in the First Information Report is not the same as stayed by the witnesses in the evidence. It has been submitted by the learned cousenl for the appellant that the First Information Report reveals that Chander Mohan submitted the application before the villagers for putting their signatures but the eye witnesses produced by the prosecution have changed their version subsequently.

24. We are of the view that this argument is nothing but an attempt to create a confusion with regards to the prosecution case. In fact that First Information Report Ex. Ka/I reveals that it is mentioned that Chander Mohan grandson of Baldev Singh submitted the application before the villager for their signatures.

25. In this context it is made clear that accused Baldev Singh was also present over there. It is nowhere clearly mentioned that the quarrel took place between Chander Mohan and others , therefore, it is quite possible that Baldev Singh who was present at the place of occurrence being closed relation to Chander Mohan Singh would have asked the villagers to made signatures.

26. PW1 Kamal Singh Rawat who has scribed the report was not present at the spot rather he was given information with regard

to the occurrence at his house and when he came at the spot and inquired from the person assembled over there and only thereafter scribed the report according to the description given to him. Therefore it was natural that there may be some minor discrepancy in his version mentioned in the FIR. PW.1 Kamal Singh has deposed in his deposition before the court that he could gather the information with regard to the occurrence by village people who had assembled at the place of occurrence . This witness has also deposed before the court that he was told that it was Baldev Singh who went to obtain the signatures of the village people on the application of Chander Mohan. Therefore in case, if there was a little discrepancy in describing fact in the FIR then we are of the view that this discrepancy does not go to the root of the case in order to discard the same.

27. There is no iota of evidence that the quarrel took place between Chandermohan and Jayendra rather there is a evidence to this affect that quarrel took place between Baldevi Ssingh and Jayendra deceased.

28. The learned counsel for the appellant has further argued that the eye witnesses account produced by the prosecution does not appear to be natural . He has invited our attention towards certain minor discrepancies appeared in the deposition of the eye witnesses produced by the prosecution.

29. We are not convinced by the arguments advanced by the learned counsel for the appellant. Minor discrepancies in the deposition of the witnesses which do not discredit the genesis of the prosecution case will not affect at all. The evidence on record reveals that the occurrence took place at the house of PW 2 Bhajan Singh who

is produced by the prosecution as an eye witness. This witness has stated that in the night of 29/ 30.7. 1992 he was talking with his brother Illam Singh at about 9.30 when Fateh Singh reached there and he also stayed there. He has further deposed that Jayendra Singh and some other persons reached there and they were all talking and sitting in '*Tewar* '. A lamp was liting there. Deposition of this witness reveals that Baldev Singh also reached there and started talking for the dealership of fair price shop for Chandra Mohan and told that they put their signatures on the application of Chandra Mohan. On this Jayendra Singh stated that person who wants signatures should come to them personally Jayendra Singh also stated as to why Baldev Singh was poking his nose. This allegations caused quarrel between Jayendra Singh and Baldev Singh . Baldev Singh threatened Jayendra Singh and Jayendra Singh accepted the challenge.

30. The deposition of Bhajan Singh PW 2 further reveals that Baldev Singh went to him house and returned after 10-15 minutes , inflicted knife injuries upon Jayendra Singh. Baldev Singh and then made his escape good and Jeyndra Singh after having sustained injuries came towards chawk about 5-10 paces and thereafter fell down on the heap of the stones and died. This witness has also stated that due to rain, the dead body of Jayendra Singh was shifted to verandah of the vacant house of Keshar Singh. The presence of this witness appears to be quite natural. The witness has no enmity with the accused/appellant Baldev Singh.

31. Again PW 3 Fateh Singh has also been produced as and eye witness by the prosecution and he has corroborated the version of PW 1 and has stated the same fact as has been stated by another witness Bhajan Singh. This witness has also supported another witness with regard to the place and time of occurrence .This witness

also does not have any enmity with Baldev Singh , rather this witness in his cross examination has stated that the accused/ appellant Baldev Ssingh belongs to his '*Biradari*'.

32. We do not find any material contradiction or omission of the material fact in the statements of eye witnesses. We also do not find any reason to disbelieve their testimony with regard to the genesis of the prosecution.

33. It is also worthy to mention here that the ocular version of the witnesses is corroborated by the medical evidence. Dr. Ajit Gairola (P.W.1) who has conducted the autopsy on the body of the deceased has deposed that the injuries are antimortem on the person of the deceased. He has stated that the injury No. 1 could be caused by the knife. When this witness was shown the knife which has recovered on the pointing of the appellant, this witness deposed that the injury No. 1 could have been caused by that knife. This witness has also excluded the possibility of injury No. 1 by falling over the stones and has stated that injury No. 1 could have been caused only by knife. Ocular version is that it was the accused Baldev who inflicted the knife injury on the chest of the deceased and on account of that injury deceased died at the spot.

34. As far as the date and time of the occurrence is concerned that also find support from the medical version. The Doctor has clearly opined that the death was caused one day before on account of the injuries caused at the chest of the deceased. The post mortem on the body was conducted on 31.07.1992 at 11:00 a.m. therefore, the time of the death also finds clear corroboration by the medical evidence.

35. The learned counsel for the appellant has further deposed that as per post mortem report there are three injuries of incised wound

on the person of the deceased. While as per the prosecution case, the deceased was stabbed by Baldev Singh by knife only once. Therefore, the two more injuries shown in the post mortem report creates doubt in the prosecution case and it appears from the perusal of the record, none of the eyewitness has seen the actual occurrence and the accused/ appellant has been falsely implicated in this case.

36. We do not find any force in this argument. It is the case of the prosecution since beginning that the accused/appellant came at the spot and inflicted knife blow injury on the person of the deceased. The main injury was found on the chest of the deceased and this injury had caused the death of the deceased – Jayendra Singh. The doctor has opined in his deposition that the injury No. 3 on the thigh could have been caused by failing on the heap of the stones. It is true that in the inquest report, two injuries on the thigh have been mentioned by the Investigation Officer but non mention of these two injuries in the inquest by the Investigation Officer is not going to dislodge the prosecution case. It appears to be quite probable that two injuries on thigh could be escaped the sight of the Investigation Officer, because of the reason that these injuries being minor in nature and the only concentration of the Investigation Officer might be on the injury caused by the knife on the chest of the deceased as has been stated by the witnesses since very beginning.

37. The way in which the incident had taken place leaves no room of doubt that these two injuries could have been caused on the person of the deceased due to fall on the heap on stones. The ocular version clearly shows that the deceased after sustaining the knife injuries on his chest walked upto a distance of 10 to 15 paces thereafter he fell on the heap of stones. Therefore, there is every possibility of these two

injuries on the thigh of the deceased could have been caused due to fall over the heap of the stones.

38. We are of the view that in case, if these two injuries escaped sight to the Investigation Officer it is not going to create any doubt in the prosecution case.

39. The learned counsel for the appellant has also submitted that the shifting of the dead body from the place of occurrence to another place and no recovery of blood stain from the place where the deceased was inflicted knife blow injury by the accused/appellant or where the fell down, gives a big hold to the prosecution case.

40. We again find this argument without any force. The explanation has been extended by the witnesses of the prosecution with regard to the loss of blood at the place of occurrence on account of rain. The explanation has also been convincingly given by witnesses with regard to the shifting of dead body. It is a case where there is a positive evidence regarding the manner in which the occurrence has taken place and the mere fact that the dead body was kept inside the house during the midnight for safety is not going to case any doubt on the prosecution case. It is not suggested that the occurrence took place at some other place except the place as has been alleged by the prosecution. There is sufficient evidence to show that the shifting of the body of the deceased was a natural act as it was shifted on account of rain and the same does not create a doubt on the prosecution story.

41. On the basis of assessment of the aforesaid evidence, we are fully convinced that the prosecution has successfully established the guilt of the appellant for offence committed by him under Section 302 I.P.C.

The trial court has rightly convicted and sentenced the appellant by way of impugned judgment and order.

42. We do not find any ground for interfering in the impugned judgment and order passed by the learned trial court. In the result the appeal is dismissed.

43. Let the record of this case be returned back to the court concerned in order to comply with the order passed by this court.

44. Accordingly, the appeal is dismissed.

(B.C. Kandpal, J.) **(P.C.Verma, J)**

December 22, 2005
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